

**Wednesday, August 16, 2006**

The Board met at its offices at 1600 Pacific Highway, Room 310, San Diego, at 9:30 a.m., with Mr. Chiang, Chair, Mr. Parrish, Vice Chair, Ms. Yee and Mr. Leonard present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

David F. Paré, 287785, 325764

2001, \$1,643.00 Assessment

2003, \$769.00 Assessment

For Appellant:

David F. Paré, Taxpayer

For Franchise Tax Board:

Craig Scott, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant qualifies for head of household filing status by virtue of his support of an unrelated minor dependent.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 8.1)

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

Kingston Technology Corporation, 288052

1997, \$14,282.00 Claim for Refund

John Tu and Mary Tu, 286420

1997, \$97,215.00 Assessment

David Sun and Diana Sun, 286421

1997, \$97,215.00 Assessment

For Appellant:

Barry Weissman, Representative

For Franchise Tax Board:

Daniel Biedler, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellants are liable for an interest charge under California's adoption of Internal Revenue Code section 453A.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 8.2)

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Daniel Y. Hagan and Helen M. Hagan, 316566

2000, \$399,336.00 Assessment

For Appellant:

Robert E. Reetz, Jr., Attorney

For Franchise Tax Board:

Natasha Page, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether respondent properly calculated appellants California-source income resulting from the exercise of stock options.

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Whether respondent properly included appellants' California-sourced gain as preference income for alternative minimum tax purposes.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board submitted the appeal for decision.

The Board recessed at 10:35 a.m. and reconvened at 10:40 a.m. with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

### **FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD AUGUST 16, 2006**

David F. Paré, 287785, 325764

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Mr. Leonard requested the Legislative Division to research what state income tax law change is needed to allow an adult to claim head of household status, when the household includes dependent minor children who are not the birth or adopted children of that adult.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING**

Michael J. Kelley, 312843

2002, \$3,181.00 Tax, \$795.25 Late Filing Penalty, \$1,024.75 Notice and Demand Penalty

For Appellant: No Appearance

For Franchise Tax Board: Craig Scott, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Issues: Whether appellant has demonstrated error in the proposed assessment of tax.

Whether appellant has demonstrated reasonable cause exists for abatement of penalties, or that the filing enforcement fee may be abated.

Whether a frivolous appeal penalty should not be imposed.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

### **FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD AUGUST 16, 2006**

Kingston Technology Corporation, 288052

John Tu and Mary Tu, 286420

David Sun and Diana Sun, 286421

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Chiang and Mr. Leonard voting no, the Board sustained

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the action of the Franchise Tax Board incorporating the Franchise Tax Board's concession based on the representation of community property for the Sun's and the Tu's that the amount is calculated with a \$10 million exclusion instead of a \$5 million exclusion.

Daniel Y. Hagan and Helen M. Hagan, 316566

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

The Board recessed at 10:50 a.m. and reconvened at 1:30 p.m. with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

### **SALES AND USE TAX APPEALS HEARINGS**

Palomar Technologies, Inc., 205059, 272356 (FHB)

4-1-00 to 3-31-03, \$25,783.60 Tax

1-1-01 to 12-31-01, \$29,926.00 Claim for Refund

For Petitioner: Carl Hempel, Controller

For Sales and Use Tax Department: Randy Ferris, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has provided sufficient evidence to show that the disallowed sale for resale to Demeter Technologies, Inc. (Demeter) was in fact a sale for resale.

Whether petitioner is entitled to a refund of excess tax reimbursement it remitted to the Board.

Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Jeffrey L. Brown, 260934 (FH)

10-1-99 to 7-31-02, \$10,040.65 Tax

For Petitioner: Cris J. Wenthur, Attorney

Jeff Brown, Taxpayer

For Sales and Use Tax Department: Sharon Jarvis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner has established that certain sales were exempt sales in interstate commerce.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Brian Jerome Doherty, 236451 (UT)

John Peter Mouyos, 239662 (EH)

August 20, 1999, \$36,425.00 Tax, \$3,642.50 Failure to File Penalty

For Petitioner: Brian Doherty, Taxpayer

Judith A. Descalso, Attorney

For Sales and Use Tax Department: Randy Ferris, Tax Counsel

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Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the evidence establishes that petitioners purchased the subject aircraft.  
Whether petitioners have established that the aircraft was not purchased for use in California.

Whether petitioners have established reasonable cause to abate the failure-to-file penalty.

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

**Aero Transit, Inc., 266803 (UT)**

February 27, 2003, \$44,950.00 Tax, \$00.00 Failure to File Penalty

For Petitioner: Norman Michael Cooley, Attorney  
Donovan J. Dunnion, Participant

For Sales and Use Tax Department: Sharon Jarvis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner has established that it did not purchase the aircraft for use in California.

Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 3:00 p.m. and reconvened at 3:13 p.m. with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

## **PUBLIC COMMENT**

Speaker: John Pratt, resident of San Diego County

## **FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD AUGUST 16, 2006**

**Palomar Technologies, Inc., 205059, 272356 (FHB)**

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the claim be granted as conceded by the Department and the petition be redetermined as recommended by the Appeals Division.

**Jeffrey L. Brown, 260934 (FH)**

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

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Aero Transit, Inc., 266803 (UT)

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

### SALES AND USE TAX APPEALS HEARINGS

Peter T. Fei, 239825, 239826 (EH)

10-2-00 to 5-29-01, \$47,754.26 Tax, \$1,878.26 Late Payment Penalty, \$4,775.43 Failure to File Penalty

1-1-96 to 6-30-00, \$59,722.85 Tax, \$3,750.81 Late Payment Penalty, \$5,139.54 Negligence Penalty

For Petitioner:

No Appearance

For Sales and Use Tax Department:

Sharon Jarvis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Issues Whether the Department has met its burden to prove that petitioner is personally liable under section 6829 for Lenwood's tax liabilities incurred for the period January 1, 1996, through June 30, 2000.

Whether the Department has met its burden to prove that petitioner is personally liable for the tax liabilities incurred during the period of Lenwood's corporate suspension.

Whether petitioner has shown cause to abate the penalties.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Raad Shakir Ajou, 285896 (FH)

1-1-00 to 12-31-02, \$3,225.01 Tax

For Petitioner:

Appearance Waived

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Issues: Whether additional adjustments are warranted to the audited understatement of reported gasoline sales.

Whether relief from the amnesty interest penalty should be granted.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

The Board adjourned at 3:20 p.m.

*The foregoing minutes are adopted by the Board on November 21, 2006.*

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Note: The following cases were removed from the calendar prior to the meeting: *Michael Edward Farrell and Christine Marie Farrell, 268382*; and, *Rebecca K. Hahn, 310934*.